

Goa, 15th July, 1966

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GOVERNMENT GAZETTE

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(No. 2)

(SUPLEMENTO)

GOVERNMENT OF GOA, DAMAN AND DIU

Secretariat

Legislative Assembly of Goa, Daman and Diu

Legislature Department

LA/1429/66

In exercise of the powers conferred on him by rule 117 of the Rules of Procedure and Conduct of Business of the Legislative Assembly of Goa, Daman and Diu, the Speaker has ordered publication of the following Bill for general information.

The Goa, Daman and Diu Agricultural Tenancy (Amendment) Bill, 1966

(Bill No. 10 of 1966)

A Bill further to amend the Goa, Daman and Diu Agricultural Tenancy Act, 1964.

Be it enacted by the Legislative Assembly of Goa, Daman and Diu in the Seventeenth year of the Republic of India as follows:—

1. Short title and commencement. — (1) This Act may be called the Goa, Daman and Diu Agricultural Tenancy (Amendment) Act, 1966.

(2) It shall come into force at once.

2. Amendment of section 3. — In section 3 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (hereinafter referred to as the principal Act),—
(i) after sub-section (1), the following sub-sections shall be inserted, namely:—

(1-A) When it is made to appear to Government that any land used for agriculture on or after the 1st July, 1962 is sought to be converted or used for any non-agricultural purpose, it may, if it considers such action necessary in the interest of agricultural production, the furtherance of the objects of this Act, or the public interest, after giving to the landlord and the tenant a reasonable opportunity of showing cause, by order prohibit such use or conversion, or permit such use or conversion, or permit such use or conversion, on such terms and conditions, as it may specify:

Provided, however, that when it appears to Government that the object in view would otherwise be defeated by delay it may issue an order prohibiting such conversion or use till the completion of the enquiry (except on such terms and conditions as may be specified), or such other order as the circumstances of the case may require, and may from time to time modify or vary such order.

(1-B) Notwithstanding anything contained in sub-sections (1) and (1-A), Government may, when it is satisfied for reasons to be recorded, that it is in the interest of agricultural production, prohibit in any local area, either absolutely or except upon such terms and conditions as may be specified, the conversion of any land used for agriculture, for any non-agricultural purpose including the raising of crops of cocoanut, arecanut, cashew or mangoes.

Every such order shall be published in the official gazette and in such other manner as may be prescribed:

Provided, however, that except when the object of the order would be defeated by delay, Government shall, in the prescribed manner give the persons affected an opportunity of showing cause against the proposed order.

(1-C) Any person who contravenes an order passed under sub-section (1-A) or sub-section (1-B) shall be guilty of an offence under section 188 of the Indian Penal Code.

(1-D) Government may take such action as is necessary for enforcing an order passed under sub-section (1-A) or (1-B); (ii) in sub-section (2), for the words, brackets and figure «The provisions of sub-section (1) the words, brackets, figures and letters «The provisions of sub-sections (1), (1-A) and (1-B)» shall be substituted.

3. Amendment of section 4. — (1) In section 4 of the principal Act, in the second proviso for the words and figures «on the 1st of July, 1962» the words and figures «on or after the 1st of July, 1962, but before the commencement of this Act» shall be substituted and shall always be deemed to have been substituted.

(2) In Section 4 of the principal Act, after the second proviso, the following shall be inserted, namely: —

«Provided further that in the case of a person claiming to be a tenant on the ground that he was a sub-tenant cultivating any land after the 1st July, 1962, but before the commencement of this Act, the application by the landlord for a declaration that such person is not a tenant may be made within six months of the commencement of the Goa, Daman and Diu Agricultural Tenancy (Amendment) Act 1966».

4. Amendment of section 6. — In clause (iii) of section 6 of the principal Act, for the words, brackets and figures «Explanation (1) to clause (7) of Section 2» the words, brackets and figures «Explanation 2 to clause (7) of Section 2» shall be substituted and shall always be deemed to have been substituted.

5. Amendment of section 7. — In section 7 of the principal Act, the following shall be added at the end of the section, namely: —

«In any such enquiry, the Mamlatdar shall presume that any statement as to the existence of a right of tenancy in a record of rights prepared in the prescribed manner under and in accordance with the provisions of this Act, is true».

6. Insertion of new section 8A. — After section 8 of the principal Act, the following section shall be inserted, namely: —

«8-A Relief in certain cases of threatened wrongful dispossession: — (1) Any tenant in possession of any land or dwelling house who apprehends that he may be dispossessed contrary to the provisions of this Act, may apply in the prescribed manner to the Mamlatdar for an order safe-guarding his right to possession.

(2) On such application, the Mamlatdar if he is satisfied on holding such enquiry as may be prescribed, that the applicant is entitled to continue in possession, shall, by order, direct the landlord or any

person claiming through him to refrain from disturbing it otherwise than in accordance with law.

(3) In any proceeding under this section, if it is proved to the satisfaction of the Mamlatdar by affidavit or otherwise that the opponent threatens to dispossess the applicant, he may by order grant a temporary injunction restraining such dispossession or otherwise causing injury until the final disposal of the proceeding or until further orders. In all such cases the Mamlatdar shall, except where it appears that the object of granting the injunction would be defeated by delay, issue notice of the application to the opponent before granting an injunction.

(4) Any person dispossessing a tenant in contravention of an order made under sub-section (2) or (3), may, in addition to any other penalty to which he is subject, on application made by the tenant within thirty days of such dispossession, and notwithstanding anything to the contrary in any other provision of this Act, be summarily evicted by the Mamlatdar who shall thereupon restore possession to the tenant».

7. Insertion of new section 13-A. — After section 13 of the principal Act, the following section shall be inserted namely: —

«13-A. Tenant's right of first purchase: — (1) When a landlord intends to sell any land cultivated by a tenant he shall give notice of his intention to the tenant in the prescribed manner and shall specify the price at which the sale is to take place and call upon him to state within 90 days of receipt of the notice whether he is willing to buy the land at the price specified.

(2) The tenant may within 90 days of receipt of the notice signify in the prescribed manner his readiness to purchase the land at the price specified in the notice and thereupon a contract to purchase the land at the said price shall be deemed to have been concluded between the landlord and the tenant.

(3) If the tenant fails within the period specified in sub-section (1) to signify his acceptance as provided in sub-section (2), the landlord shall be free to sell the land in question to any person at a price not lower than that set out in the notice.

(4) Any sale by a landlord to a person other than a tenant without giving the notice required by sub-section (1), or before the expiry of the period of the said notice or at a price lower than that set out in the notice shall be void.

(5) Notwithstanding anything in this section, a tenant who fails to avail himself of the offer of first purchase made under sub-section (1) shall not, by reason thereof, cease to be a tenant, but shall continue as a tenant under the new owner on the same terms and conditions as before.

(6) Government may, subject to due appropriation being made in this behalf, grant on such terms as may be prescribed, a loan to a tenant for the purchase of any land in respect of which a notice has been served upon him under sub-section (1)».

8. Amendment of section 14. — In section 14 of the principal Act, after sub-section (2), the following proviso shall be added, namely: —

«Provided, however, that no partition or sub-division shall be permissible if the share allotted to

any heir or co-partner together with any other land already held by him is less than $\frac{1}{3}$ hectare of morod land and $\frac{1}{4}$ hectare of Khajan or Kher land».

Explanation.—The allotment of a separate number to any portion of the land for the purposes of land records or land survey under any law for the time being in force shall not, by itself, amount to a sub-division or partition for the purpose of this sub-section».

9. Insertion of new section 15-A. — After section 15 of the principal Act, the following section shall be inserted, namely:—

«15-A. When a tenant has mortgaged his interest in the land in favour of Government, in consideration of a loan advanced to him, then, notwithstanding anything contained in any other provision of this Act, the landlord shall not, while the mortgage subsists, without the prior permission of Government, be entitled to resume the land for personal cultivation, or to terminate the tenancy on any of the grounds mentioned in section 11 or otherwise, nor shall the tenant be entitled without such permission to surrender his interest to the landlord and any such surrender shall be void:

Provided, however, that for the period during which such permission has been sought but has not been granted, the obligations of the tenant under this Act to the landlord shall devolve upon Government».

10. Amendment of section 22. — In section 22 of the principal Act, in clause (V), after the words «the provisions of this Chapter» the words «prescribing the powers which may be exercised by any original, appellate or revisional authority in disposing of such applications and all connected and incidental proceedings» shall be added.

11. Amendment of section 26. — In section 26 of the principal Act, —

(i) in sub-section (3), for the existing proviso the following provisos shall be substituted, namely:—

«Provided, however, that in the case of repairs to branches in bunds which may be specified by Government as protective bunds, Government shall, on such conditions and in such manner as may be prescribed, contribute a sum not exceeding 50% of the cost of such repairs»:

«Provided, further, that the duty and responsibility of carrying out works of a recurring nature designed to conserve water such as the closure of apertures of the sides or wall of a tank, shall continue to be that of the person on whom it was cast, according to the custom, usage or practice in force immediately before the commencement of this Act.

Any question as to the existence of any such custom, usage, or practice as aforesaid shall be determined by the Mamlatdar after such enquiry as may be necessary or prescribed»;

(ii) after sub-section (3) the following sub-section shall be inserted namely:—

«(3-A) (a) Whenever it appears to the Mamlatdar that any of the works of maintenance, repair and conservancy referred to in sub-section (3) have been neglected for any reason whatsoever he may, by order in writing, direct that the works shall be

carried out by such person as may be specified and the cost thereof shall be recovered from the beneficiaries of the work done as arrears of land revenue:

Provided that in the case of repairs to protective bunds where the breaches have occurred owing to the negligence of the owner of any land to which this Act does not apply, the cost of repairs incurred as a result of such negligence may also be recovered from such persons as may be named in the order of the Mamlatdar as arrears of land revenue:

(b) The person from whom the costs are recovered under the preceding clause shall be entitled to recover the same or an appropriate portion thereof from any person who in law is wholly or partially liable to construct, maintain or repair the bunds.

(c) The question as to who are the beneficiaries of repairs to a bund shall be determined by the Mamlatdar.

(d) From any order passed by the Mamlatdar under this sub-section an appeal shall lie to Government whose decision shall be final»;

(iii) in sub-section (4), for the words «preceding sub-section «the words» preceding sub-sections» shall be substituted.

12. Amendment of section 39. — In section 39 of the principal Act; —

(i) for the existing sub-section (1), the following sub-section shall be substituted, namely:—

«(1) If any person (hereinafter called the applicant) desires to construct, or repair, or to maintain, as the case may be, a water course to take water for the purpose of agriculture from a source of water to which he is entitled but such water course is to be constructed or runs through any land which belongs to, or is in possession of, another person (hereinafter called the neighbouring holder) and if no private agreement is arrived at for such construction or repairs or maintenance, as the case may be, between the applicant and the neighbouring holder, the person desiring to construct or repair or maintain the water course may make an application in the prescribed form to the Mamlatdar.

(ii) in sub-section (2), after the words «to construct» the words «or to repair or to maintain, as the case may be», shall be inserted».

13. Insertion of new section 42-A. — After section 42 of the principal Act, the following section shall be inserted namely:—

42-A. Procedure for regulating the discharge of joint responsibility of tenants.

(1) When under any of the provisions of this Act, the duty and responsibility of any work of conservancy, maintenance or repair of any bund, embankment, ridge, sluice-gate or any other work is that of more than one tenant, Government may, by rules regulate the manner in which such duty or responsibility shall be discharged, and also the determination and recovery of the share of a tenant of the cost of a work to which he is under an obligation to contribute.

(2) without prejudice to the generality of the foregoing, such rules may provide for —

(i) the constitution, functions and organisation of tenants' associations for any local area;

(ii) the management and regulation of sources of income of the associations such as income from trees on bunds, operation of sluice-gates, fisheries and such other sources of income as may be prescribed;

(iii) the determination of the beneficiaries of any work, the apportionment and recovery of the cost of such work from among them;

(iv) the manner in which works shall be executed; and

(v) the conditions and mode of payment of Government's contribution.

(3) Any sum of which is payable by a tenant towards the cost of any such work as is referred to in sub-section (1) shall be recoverable as arrears of land revenue.

Explanation: — For the purpose of this Section the term «tenant» shall include every person who cultivates land personally.

14. Insertion of new section 46-A. — After section 46 of the principal Act the following section shall be inserted, namely: —

«46-A. Powers of the Mamlatdar to inquire into contraventions.

(1) Notwithstanding the fact that no application has been made to him in this behalf the Mamlatdar may, upon information received or upon his own knowledge or suspicion, that any of the provisions of this Act have been contravened hold an inquiry in the prescribed manner into the alleged contravention as if an application had been made to him in this regard.

(2) Government may, in any case where it has reason to believe that there has been a contravention of the provisions of the Act, direct the Mamlatdar to hold an inquiry into the alleged contravention.

The powers of Government under this sub-section may also be exercised by the Collector and any other Officer empowered in this behalf by Government».

15. Amendment of section 48. — In section 48 of the principal Act; —

(i) in the proviso to sub-section (1), after the words «such order» the words «other than an order directing the restoration of possession to a tenant» shall be inserted;

(ii) after the said proviso, the following shall be added, namely: —

Explanation: — For the purposes of the preceding proviso the expression «tenant» shall not include a person deemed to be a tenant under section 4 or section 5».

16. Insertion of new section 58-A. — After section 58 of the principal Act, the following section shall be inserted, namely: —

«58-A. Bar on appearance by Pleadors.

Notwithstanding anything contained in this Act or any law for the time being in force, no pleader shall be entitled to appear on behalf of any party in

any proceedings under this Act before the Mamlatdar, or the Collector:

Provided that the Mamlatdar, or the Collector may, in the interests of justice and for reasons to be recorded in writing, allow the parties to be represented at their own cost by a pleader:

Provided, further, that pleader's fees shall not be allowed part of the costs in any such proceedings:

Provided also that if any officer of Government is appointed or declared by a competent court or is authorised under any law for the time being in force as a guardian, administrator or manager of the property of a person who is under a legal disability or is incompetent or unable to manage or to act, such Officer shall be entitled to appear through a representative authorised by him in writing in this behalf in any proceedings before the Mamlatdar, or the Collector. Such representative who may be a pleader may also submit any application and otherwise act on behalf of the Officer in any such proceedings.

Explanation: — For the purpose of this section the expression «pleader» includes an advocate attorney, Vakil or any other legal practitioner but does not include a representative of Farmers Association».

17. Insertion of new sections 60-A and 60-B. — After section 60 of the principal Act, the following sections shall be inserted, namely: —

«60-A. Offences under the Act to be cognizable and compoundable:

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898): —

(a) every offence under this Act shall be cognizable; and

(b) every such offence may, with the permission of the Court, be compoundable.

«60-B. Offences by Companies.

Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not) every Director, Manager, Secretary, Agent or other Officer or person concerned with the management thereof, shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

Financial Memorandum

The Bill, inter alia, seeks to enable the Government to grant advances to tenants to exercise the right of preemption and purchase lands cultivated by them whenever the landlords intend to sell the lands. The total expenditure involved on this account in the current financial year is not expected to be of a high order.

In the Budget for the current year there is a provision of Rs. 5,44,000/- under «Q — Loans and advances by State and Union Territory Governments — B — Advances to cultivators». A part of these funds can be utilised by reappropriation for the purpose of grant of advances to tenants for purchase of lands. Additional funds will be provided if found necessary by seeking a Supplementary Grant in the course of the year.

Memorandum of Delegated Legislation

In this Bill powers are proposed to be given to the Government to make rules on various matters of detail for implementing the provisions of the Bill. These Rules when framed will be laid on the table of the House and will be subject to such modifications, etc. as may be made by the House.

Statement of Objects and Reasons

The Bill seeks to make certain additions and amendments to the existing provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964, for the purpose of effective implementation of the Act and to confer additional powers on the authorities concerned therewith. A gist of the additions and amendments is given below:—

2. It is proposed to empower the Government to prohibit conversion or use of agricultural land to non-agricultural purposes and to make contravention of an order passed by Government in this behalf a penal offence.

3. It is proposed to empower Government to notify certain specific areas in the Territory where conversion of agricultural land into plantations of coconut, cashew, arecanut or mangoes to be totally prohibited.

4. It is proposed to enable sub-tenants who cultivate the land after 1st July 1962 but before the commencement of the Act to claim tenancy rights. At the same time, the landlord would be given an opportunity to make an application to the Mamlatdar contesting such a claim within six months of the date of coming into force of this Bill.

5. It is proposed to give presumptive evidential value to the right of tenancy included in the Record of Rights prepared for purposes of noting tenancy rights.

6. It is proposed that where a tenant apprehends wrongful dispossession of land, he may apply to the Mamlatdar for grant of temporary injunction restraining such a dispossession or otherwise causing injury to the land.

7. It is proposed to give the right of first purchase to the tenant cultivating the land whenever the landlord intends to sell the land. To assist the tenant to purchase the land, it is proposed to empower the Government to grant a loan to him.

8. In order to prevent fragmentation of holdings, it is proposed to fix certain minimum limits below which such partition/sub-division will not be permitted.

9. In order to safeguard the Government's interests in the loans granted to tenants, it is proposed to prohibit resumption of such land by a landlord for personal cultivation or for termination of tenancy or for surrender of tenancy until such time as the loan is discharged.

10. It is proposed to define more precisely the Government's contribution to meet the cost of repairing breaches in protective bunds and also to get executed essential works (of protection) at Government cost initially and for recovery of the share of the cost from the individuals responsible. Opportunity has also been taken to make certain additional provisions in the matter of fixation of responsibility of beneficiaries of the protective bunds and to enable construction of water courses. An enabling provision is being included for empowering construction of water courses, their repairs and maintenance.

11. It is proposed to make a provision for formation of Cultivators' Association and vesting in the Association joint duty and responsibility for conservancy, maintenance or repair of bunds, embankments, sluice gates and other such works and for Governmental regulation in this matter. Government may also make rules for management and regulation of sources of income of the Associations such as income from trees on bunds, operation of sluice gates, fisheries, etc., and other cognate matters for the successful working of the Association.

12. It is proposed to empower the Mamlatdar to enquire into contravention of any of the provisions of the Act *suo motu*.

13. It is proposed to bar appearance of pleaders on behalf of any party in any proceedings under this Act before the Mamlatdar of the Collector. Provided however the Mamlatdar or the Collector may, in the interest of justice, allow such appearance at the cost of the parties themselves.

14. New provisions are also being made for making offences under the Act cognisable and for such offences being compounded and also to fix responsibility when the offender is a company, body corporate or an association of persons.

Panjim,
July 14, 1966.

D. B. BANDODKAR
Chief Minister

ASSEMBLY HALL P. B. VENKATASUBRAMANIAN
Panjim, Secretary to the Legislative Assembly
July 15, 1966. of Goa, Daman and Diu.